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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 118 OF 1994
Cuttack this the 14th day of December, 1999

K. Nageswar Achary

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
14.12.99

14.12.99
(G. MARASIMHAM)
MEMBER (JUDICIAL)

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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 118 OF 1994
Cuttack this the 17th day of December, 1994

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Sri K.Nageswar Achary, aged 33 years
Son of Late K. Janardan Achary,
Vill/Po: Padmapur, Via: Gosani Nuagaon
Dist: Ganjam

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Applicant

By the Advocates : M/s.S.Kr.Mohanty
S.P.Mohanty

-Versus-

1. Union of India represented by its
Secretary, Department of Posts,
Dak Bhawan, New Delhi
2. Senior Superintendent of Post Offices
Berhampur (G.M.)
Division, Berhampur, Dist: Ganjam
3. Director of Postal Services
Office of the P.M.G., Berhampur
Ganjam Region, Berhampur, Dist: Ganjam

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Respondents

By the Advocates : Mr.A.K.Bose
Sr.Standing Counsel
(Central)

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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant, K.Nageswar Achary, who was removed from service while serving as Extra Departmental Branch Post Master, Padmapur Branch Office in a disciplinary proceeding seeks to quash order dated 12.5.1993(Annexure-2) of the disciplinary authority(Res.2) removing him from service and order dated 30.11.1993(Annexure-3) of the appellate authority(Res.3) confirming the said order of removal by Res.2.

The following facts are not in controversy. On 12.11.1990, the applicant, as E.D.B.P.M., Padmapur Branch Office accepted a sum of Rs.50/- along with the Passbook of 10 years C.T.D. Account No.97111 including the pay-in-slip from the depositor Shri S.P.Brahma and made due entry of the amount in the said Passbook and so also in the C.T.D./R.D. Journal of that date. However, he did not credit that amount in the Branch Office Account of that date. On 17.8.1991, he credited a sum of Rs.72.50 in the Branch Office Account with reference to this deposit. On detection he was put under off duty and charge memo dated 6.3.1992 was served on him on the ground that he failed to maintain absolute integrity and devotion to duty in violation of Rule-17 of E.D. Agents(Conduct and Service) Rules, 1964.

The applicant having denied the charge of not maintaining absolute integrity and devotion to duty, the matter was enquired into. The Inquiring Officer submitted his report dated 13.4.1993 holding that ^{charge} the applicant failed to maintain absolute integrity has not been proved though there are materials to establish that he failed to

maintain devotion duty. A copy of this enquiry report was sent to the applicant for submission of representation, if any and the applicant submitted his representation. The disciplinary authority (Res.2) in his order dated 12.5.1993(Annexure-2) disagreed with the view of the enquiring authority and held that charge regarding failure to maintain absolute integrity has been fully proved, besides the proof of charge with regard to failure to maintain devotion to duty. This order of the disciplinary authority, as earlier stated, has been confirmed by the appellate authority in his order dated 30.11.1993(Annexure-3).

3. In this Original Application it has been averred that on 12.11.1990, after the applicant made entries in the Passbook and in the Journal book, he found 50 rupees currency note handed over to him by the depositor was a torn one and he accordingly returned the note to the depositor for replacement. When afterwards, the depositor returned the amount of Rs.50/-, he put that currency note along with the pay-in-slip in one of the old Branch Office journal Khata of 1986 and subsequently he forgot about the transaction. When on 17.8.1991 he recollected the currency note of Rs.50/- and pay-in-slip inside the Khata, he deposited Rs.72.50, i.e., Rs.50/- + penal interest to regularise the matter. Thus, according to him, the mistake was unintentional and he had no ulterior motive to have a wrongful gain. Even the witnesses and depositor, during enquiry stated that his integrity was beyond doubt. But the disciplinary authority for no reason or the other disagreed with the findings of the enquiring authority and his finding as such is based on no evidence.

4. Respondents (Department) in their counter opposed the prayer of the applicant for quashing of the punishment orders only on the ground that the punishment of removal was justified with reference to the facts mentioned above.

5. No rejoinder has been filed.

6. We have heard Shri S.P.Mohanty, learned counsel for the applicant and Shri A.K.Bose, learned Sr. Standing Counsel appearing for the respondents. Also perused the records.

7. Anexure-1, the charge memo dated 6.5.1992 reveals that the applicant was charged for violation of Rule-17 of E.D. Agents (Conduct & Service) Rules, 1964 on the ground that he failed to maintain absolute integrity and devotion to duty. The enquiring authority though held that the applicant failed to maintain devotion to duty, exonerated him from the charge of failure to maintain absolute integrity. The disciplinary authority differed from the view of the enquiring authority and held that the applicant even failed to maintain absolute integrity and on the basis of this finding, punishment of removal from service was imposed.

Thus it is a case where the disciplinary authority disagreed with the finding of the enquiring officer in regard to proof of a major charge, i.e., failure to maintain absolute integrity. There is nothing on record to indicate that before disturbing this finding of the enquiring officer that the charge in regard to failure to maintain absolute integrity has not been proved, the disciplinary authority had indicated his tentative decision on that issue to the applicant and thereby gave him

an opportunity to be heard on that point. Recently the Apex Court in **Yoginath D.Bagade vs. State of Maharashtra** reported in **Judgment Today 1999(6) SC 62** following their earlier decisions in ESIL case reported in **Judgment Today 1993(6) SC 1** and **K.B.Mishra's case in Judgment Today 1998(5) SC 548** held that **disciplinary authority**, when disagrees with the view of the enquiring authority has to communicate the 'tentative' reasons for his disagreement to the delinquent, so that the delinquent may further indicate ~~these~~ reasons are not germane and finding of the F.O. is not liable to be interfered with. The Apex Court further observed that even in the absence of specific provisions, rules of natural justice are to be read into the rules.

The disciplinary authority having not given this opportunity to the applicant as required under the principles of natural justice to substantiate that the finding of the enquiring officer that the charge of failure to maintain absolute integrity as not proved, is not liable to be interfered with, grossly violated the principles of natural justice by differing from the finding of the enquiring officer in this regard. Consequently the findings of the disciplinary authority and appellate authority with regard to charge that the applicant failed to maintain absolute integrity as proved cannot but be set aside.

However, the findings that the applicant lacked devotion to duty cannot be interfered with as we do not come across any procedural lapse in arriving at this finding, more so when the applicant admits his lapse in accounting the deposited amount of Rs.50/-, though on account of inadvertence.

Q. Question then arises whether the penalty of removal from service is justified only for lack of devotion to duty of this nature. Law is well settled by the Apex Court that a Court or Tribunal, normally cannot substitute its own conclusion on penalty and impose some other penalty in a case arising out the disciplinary proceeding, but if the punishment imposed shocks the conscience of the Court or Tribunal, it would appropriately mould the relief either directing the

authority to reconsider the penalty or to shorten the litigation and in exceptional and rare cases impose appropriate punishment with cogent reasons. (B.C. Chaturvedi vs. Union of India reported in (1995) 6 SCC 749.

In this case, the enquiry report, copy of which has been filed by the applicant reveals that witnesses in general stated that the integrity of the applicant is beyond doubt. It is only a case of delay in accounting a sum of Rs.50/- in the B.O.Account ^{when} ~~that~~ the same was accounted in the C.T.D. R/D Journal on the same day. Even the amount has been accounted subsequently by depositing penal interest. In this background, we feel, imposition of penalty of removal from service is grossly disproportionate to the charge established. Hence the punishment of removal from service has to be quashed.

Question then comes for consideration whether this Tribunal ^{can} ~~can~~ impose appropriate punishment. The incident relates to the year 1990 and the applicant ~~is~~ ^{was} under put off duty ⁱⁿ ~~since~~ August, 1991. Hence any direction to the disciplinary authority to reconsider the penalty than the penalty of removal from service would mean further delay. We, therefore, feel it is a fit case where, while quashing the penalty of removal from service, we should impose penalty of debaring the applicant from being considered for recruitment to Group D post for a period not exceeding three years as provided under Rule-7(iij) of the Rules, which, in our opinion, would meet the ends of justice.

In the result, while quashing impugned orders at

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 Annexures-2 and 3, we impose penalty of debarring the applicant from appearing examination for the post of Postman/Postal Assistant/Sorting Assistant for a period not exceeding three years. The applicant be reinstated forthwith.

The application, as per observations and directions made above, is disposed of, but without any order as to costs.

Somnath Som
 (SOMNATH SOM)
 VICE-CHAIRMAN

14.12.99
 B.K.SAHOO

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 (G.NARASIMHAM)
 MEMBER(JUDICIAL)